REMARKS

The Office Action dated October 22, 2007, has been received and carefully considered. Reconsideration of the outstanding rejections in the present application is respectfully requested based on the following remarks.

I. THE ALLOWABILITY OF CLAIMS 3-6

Applicant notes with appreciation the indication on page 6 of the Office Action that claims 3-6 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. However, Applicants have opted to defer rewriting the above-identified claims in independent form pending consideration of the arguments presented below with respect to the rejected claims.

II. THE NON-STATUTORY SUBJECT MATTER REJECTION OF CLAIM 8

On pages 2 of the Office Action, claim 8 was rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. This rejection is hereby respectfully traversed.

The Examiner asserts that claim 8 recites "one processor readable carrier for storing a computer program of instructions configured to be readable by at least one professor for instructing the at least one processor to execute a computer

process" is not a computer readable medium and is not encoded with computer executable instructions; therefore, it is not functional. Applicant respectfully disagrees. Applicant respectfully submits that claim 8 has been amended to recite "one processor readable medium for storing a computer program of instructions" to address the concerns of the Examiner in the previous Response filed on August 13, 2007. Yet, the Examiner still maintains that claim 8 recites "one processor readable carrier," therefore reconsideration of the rejection of claim 8 under 35 U.S.C. 101 is respectfully requested.

In view of the foregoing, it is respectfully requested that the aforementioned non-statutory subject matter rejection of claim 8 be withdrawn.

III. THE ANTICIPATION REJECTION OF CLAIMS 1, 2 AND 8-20

On pages 3-6 of the Office Action, claims 1, 2 and 8-20 were rejected under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0058893 to Dworkin et al. ("Dworkin"). This rejection is hereby respectfully traversed.

Under 35 U.S.C. § 102, the Patent Office bears the burden of presenting at least a prima facie case of anticipation. In re Sun, 31 USPQ2d 1451, 1453 (Fed. Cir. 1993) (unpublished).

Anticipation requires that a prior art reference disclose, either expressly or under the principles of inherency, each and every element of the claimed invention. Id.. "In addition, the prior art reference must be enabling." Akzo N.V. v. U.S. International Trade Commission, 808 F.2d 1471, 1479, 1 USPQ2d 1241, 1245 (Fed. Cir. 1986), cert. denied, 482 U.S. 909 (1987). That is, the prior art reference must sufficiently describe the claimed invention so as to have placed the public in possession of it. In re Donohue, 766 F.2d 531, 533, 226 USPQ 619, 621 (Fed. Cir. 1985). Such possession is effected only if one of ordinary skill in the art could have combined the disclosure in the prior art reference with his/her own knowledge to make the claimed invention. Id..

Regarding claim 1, the Examiner asserts that Dworkin discloses the claimed invention. However, Applicant respectfully submits that Dworkin fails to disclose, or even suggest, "transmitting a checkpoint indication signal simultaneously to a primary element and at least one backup element," as presently claimed. In contrast, Dworkin discloses that "each CMTS 104 simultaneously receives a calibration pulse." See, e.g., paragraph [0077]. As shown in Figure 1 of Dworkin, each CMTS 104 is separated from the calibration pulse generator 103 at different distances. Therefore, in order for

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each CMTS 104 to simultaneously receive the calibration pulse, the calibration pulse generator 103 of Dworkin sends the calibration pulse to each CMTS 104 at different times in order to compensate for the different distances between each CMTS 104 and the calibration pulse generator 103. Specifically, Dworkin discloses "where the calibration pulse is issued by calibration pulse generator 103, a latency correction value of one TGC count is appropriate. In contrast, where the calibration pulse is issued by Master CMTS 104A, a latency correction value of up to three TGC counts is necessary." See, e.g., paragraph [0086]. Thus, Dworkin fails to disclose, or even suggest, "transmitting checkpoint indication signal simultaneously to a primary element and at least one backup element," as presently claimed.

Also, Applicant respectfully submits that Dworkin fails to disclose, or even suggest, "generating a first checkpoint that is indicative of a first status of the primary element associated with a first arrival time of the checkpoint indication signal at the primary element," as presently claimed. In contrast, Dworkin discloses that "upon issuance of a pulse, the synchronization circuit 223 for each CMTS 104 loads its TGCVerify register 320 with the current value of its TGCCounter 315." See, e.g., paragraph [0078]. Loading the current value of the TGCCounter 315 to the TGCVerify register 320 can not be

interpreted as ""generating a first checkpoint that is indicative of a first status of the primary element associated with a first arrival time of the checkpoint indication signal at the primary element," as presently claimed. In contrast, Dworkin discloses "the issuance of ld_ts (a signal that loads the TGC counter with the contents of a TGCLoad register) causes the value stored in a TGCLoad register 310 to be loaded into a TGCCounter 315. The TGCCounter 315 maintains the current time stamp value of a CMTS device 104." See, e.g., paragraph [0060]. Therefore, Dworkin discloses the value in the TGCCounter 315 is already existent when the calibration pulse arrives at CMTS 104A and therefore Dworkin does not disclose "generating a first checkpoint that is indicative of a first status of the primary element associated with a first arrival time of the checkpoint indication signal at the primary element," as presently claimed. Furthermore, Dworkin discloses "master CMTS 104A can be used to generate the calibration pulse." See, e.g., paragraph [0077]. Therefore, master CMTS 104A does not generate a first check point associated with a first arrival time of the calibration pulse because master CMTS 104A generates the calibration pulse and Dworkin fails to disclose an arrival time of the calibration pulse at the master CMTS 104.

Moreover, Applicant respectfully submits that Dworkin fails to disclose, or even suggest, "generating a second checkpoint that is indicative of a second status of the at least one backup element associated with a second arrival time of the checkpoint indication signal at the at least one backup element," as presently claimed. In contrast, as stated above, Dworkin discloses that "upon issuance of a pulse, the synchronization circuit 223 for each CMTS 104 loads its TGCVerify register 320 with the current value of its TGCCounter 315." *See*, e.g., paragraph [0078]. Accordingly, is it respectfully submitted that claim 1 is allowable over Dworkin.

Regarding claims 2, 8, 12, 16, and 20 these claims are dependent upon independent claim 1. Thus, since independent claim 1 should be allowable as discussed above, claims 2, 8, 12, 16, and 20 should also be allowable at least by virtue of their dependency on independent claim 1. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

Regarding claims 9-11, these claims recite subject matter related to claim 1. Thus, the arguments set forth above with respect to claim 1 are equally applicable to claims 9-11. Accordingly, is it respectfully submitted that claims 9-11 are

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allowable over Dworkin for the same reasons as set forth above with respect to claim 1.

Regarding claims 13-15 and 17-19 these claims are dependent upon independent claim 9-11. Thus, since independent claim 9-11 should be allowable as discussed above, claims 13-15 and 17-19 should also be allowable at least by virtue of their dependency on independent claim 9-11. Moreover, these claims recite additional features which are not disclosed, or even suggested, by the cited references taken either alone or in combination.

In view of the foregoing, it is respectfully requested that the aforementioned anticipation rejection of claims 1, 2, and 8-20 be withdrawn.

IV. CONCLUSION

In view of the foregoing, it is respectfully submitted that the present application is in condition for allowance, and an early indication of the same is courteously solicited. The Examiner is respectfully requested to contact the undersigned by telephone at the below listed telephone number, in order to expedite resolution of any issues and to expedite passage of the present application to issue, if any comments, questions, or suggestions arise in connection with the present application.

To the extent necessary, a petition for an extension of time under 37 CFR § 1.136 is hereby made.

Please charge any shortage in fees due in connection with the filing of this paper, including extension of time fees, to Deposit Account No. 50-0206, and please credit any excess fees to the same deposit account.

Respectfully submitted,

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